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FIRST ANNUAL REPORT

of the

SOUTH CAROLINA

SECOND INJURY FUND

to the

GENERAL ASSEMBLY

July 1, 1974 through June 30, 1975

**Printed Under the Direction of the
State Budget and Control Board**

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LETTER OF TRANSMITTAL

Columbia, S. C., July 1, 1975

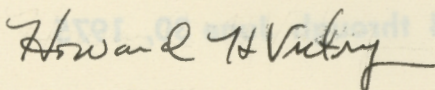
*TO: His Excellency, The Governor of South Carolina, The
Honorable Members of the Senate and House of Repre-
sentatives, Columbia, South Carolina.*

Gentlemen:

I am pleased to transmit herewith the report of activities of the South Carolina Second Injury Fund for the fiscal year 1974-1975. This report is for the first fiscal year of the Fund since it was separated from the Industrial Commission and set forth August 1, 1974, as a separate State Agency.

Respectfully submitted,

SOUTH CAROLINA SECOND INJURY FUND



Howard H. Victry
Director

HISTORICAL DEVELOPMENT

Historically, Second Injury Funds, also commonly referred to as Subsequent Injury Funds or Special Disability Funds, are set up within the compensation system to insure that an employer who

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ADMINISTRATION

The Fund is administered by a director, secretary and administrative assistant who are responsible for the following major areas—claims, finance and employer/insurance carrier education. Claims handling consists of receiving and process-

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Columbia, S. C., July 1, 1975 1

SOUTH CAROLINA SECOND INJURY FUND

(1) Howard H. Victry
Director

(2) Olan A. Hembree, Jr.
Administrative Assistant

HISTORICAL DEVELOPMENT:

Historically, Second Injury Funds, also commonly referred to as Subsequent Injury Funds or Special Disability Funds, are set up within the administrative framework of the Workmen's Compensation system to insure that an employer who hires a handicapped worker will not, in the event such worker suffers a subsequent injury on the job, be held liable for a greater disability than actually occurred while the worker was in his employment. Under such a system, the employer pays only the benefits that are due for the second injury. By removing an employer's fear of increased Workmen's Compensation costs, Subsequent Injury Funds are intended to enhance employment opportunities for disabled workers. This system of apportionment varies from State to State. A discussion about how the employer in South Carolina is reimbursed or how his liability is limited when the handicapped worker sustains a subsequent injury is found in a later section.

The Workmen's Compensation laws in South Carolina has contained a provision providing for Second Injury Fund benefits to injured employees since the law was enacted in 1936. Inadequate funding and the law's narrow scope prevented effective utilization of the Fund by employers and employees.

The Fund in its present form was created by the Legislature on July 1, 1972, as a separate agency of state government. The responsibility of administering the Second Injury Fund was delegated to the Industrial Commission by the Budget and Control Board, and in 1973, the Fund through legislative amendment, became a department of the Industrial Commission. When revision of the Industrial Commission occurred in 1974, the Second Injury Fund was separated and given full status as a separate state agency. The director of the Fund is appointed by the Budget and Control Board.

ADMINISTRATION:

The Fund is administered by a director, secretary and administrative assistant who are responsible for the following major areas—claims, finance and employer/insurance carrier education. Claims handling consists of receiving and process-

ing of claims against the Fund. Claims processing includes investigation, evaluation and development of a course of action as well as reaching a disposition in each case. All fatal cases reported to the South Carolina Industrial Commission are reviewed by the staff, and in the absence of dependents or next-of-kin in fatal Workmen's Compensation cases, the Second Injury Fund is beneficiary of the commuted death benefits normally paid to the dependents or next-of-kin.

An assistant attorney general, from the Attorney General's staff, represents the Fund in any litigation brought to enforce claims against the Fund or in the cases made by the Fund for lapsed death benefits. The attorney also researches points of law in relationship to interpreting the Second Injury Fund statute. This is very important because of the lack of precedent pertaining to the Second Injury Fund in this State.

As previously mentioned, the Fund became a separate State agency on August 1, 1974. Our bookkeeping was handled on an interim basis during the remainder of the fiscal year by the finance department of the Industrial Commission. During the latter part of the fiscal year 1974-75, arrangements were made to shift this responsibility completely to the Second Injury Fund staff.

The educational responsibility includes seminars, public meetings, and meetings with civic groups, employers and insurance carriers in an effort to explain the provisions and requirements of the Fund. While this activity has diminished from the level of the first two years the Fund was in existence, it has been found that education regarding the Second Injury Fund is a continuing process. It has been given a high priority this past year and will remain a substantial responsibility in the future.

Because the Fund is a relatively new agency, the director, secretary and the administrative assistant have inter-relating responsibilities. The entire operation is supervised by the director with the administrative assistant handling most of the outside investigation. This assistant evaluates, recommends a course of action, and assists in carrying out disposition of cases. He is also instrumental in preparing cases for hearings and assists with employer/carrier education. The

current staff was able to handle last year's workload; however, in the immediate future, our staffing will have to increase.

The Fund's secretary handles all clerical responsibilities for the director and the administrative assistant. This individual has assumed the bookkeeping and personnel records formerly handled by the financial officer of the Industrial Commission.

STATUTORY AUTHORITY FOR THE AGENCY:

This agency finds its statutory authority in Section 72-602 of the South Carolina Workmen's Compensation law as amended in 1974. This section creates the administration of the Fund and charges it with the responsibility of administering the Fund according to the provisions and requirements outlined in Section 72-601 and 72-601.1.

During the fiscal year 1973-1974, it became apparent that certain changes were needed in order to create a more functional Second Injury Fund. With information obtained from employers, insurance carriers, attorneys and from the South Carolina Industrial Commission, recommendations were made to a special committee appointed to study and recommend legislative changes to the Workmen's Compensation law. The following are the basic changes recommended and enacted August 1, 1974:

1. Reduce the employer's initial liability from 104 weeks to 78 weeks of benefits.
2. Provide partial medical reimbursement during the first 78 weeks of medical care.
3. Modify the employer's knowledge requirement to allow for reimbursement when information pertaining to a prior impairment is either withheld by or unknown to an employee.
4. Broaden the prior impairments covered by the Act, relax the general catch-all phrase of 120 weeks of disability to 78 weeks.
5. Provide for additional benefits for permanent total cases involving subsequent amputation of major members.
6. The Second Injury Fund should become a separate state agency.

7. In certain cases if the employer can show proof that the subsequent accident would not have occurred "but for" the prior impairment, then reimbursement would be in order.
8. The Second Injury Fund receives recovery of money reimbursed to an employer when the employer recovers from a Third Party.
9. Extend reimbursement to employer in cases involving prime contractor and sub-contractor when the prime contractor has to provide Workmen's Compensation coverage to an employee of the sub-contractor.
10. Allow the Fund to enter into compromise settlements with Commission approval.

The Second Injury Fund principle requires an allocation of costs of the benefits payable for a loss between the employer or insurer on one hand, and the Second Injury Fund, on the other. It is most common for the employer or his insurer to pay the disability caused by the second injury and the Second Injury Fund to make up the difference between the employer's liability and whatever is payable for the loss as a whole. In revising the Second Injury Fund in South Carolina, the Legislature attempted to establish a system of reimbursement that would eliminate a controversy over proportionate sharing in particular cases and expedite the other determinations that need to be made in order that the employee or his beneficiaries receive payments. For this reason, the original 104 week rule was established making the employer responsible for all benefits payable to the claimant and then be eligible to receive reimbursement from the Second Injury Fund for all benefits paid in excess of 104 weeks following the injury. The 104 week rule was modified and reduced during the fiscal year 1974-75 to 78 weeks.

Another basic element that must be established before the Second Injury Fund can reimburse benefits to an employer or its carrier, is that the subsequent injury must produce a disability which has combined with or been aggravated by a prior impairment to cause liability for compensation and medical benefits, that is substantially greater than that which would have occurred from the subsequent injury alone. This is a basic concept to Second Injury Fund legislation and with-

out this increase in liability, the employer has not been placed at a disadvantage through increased Workmen's Compensation liability; therefore, he would not be eligible for reimbursement from the Fund.

FINANCIAL STATEMENT

Balance from previous year	
1973-74	\$617,357.00
Disbursements	
Reimbursements made by Fund.....	\$102,404
Administrative Costs	66,831
Total	\$169,235 less 169,235.00
Balance in Fund after reimbursement and administrative costs	448,122.00
Receipts	
Investment interest	\$ 71,072
Death benefits (Lapsed Death)....	96,329
Refund	13
Total	\$167,414 add 167,414.00
Total funds at end of fiscal year 1974-75	\$615,536.00

ASSESSMENTS

Assessments to self-insured employers, workmen's compensation insurance carriers and the South Carolina State Workmen's Compensation Fund.

Disbursements from Fund for fiscal year 1974-75 ..	\$ 169,235
169,235 X 175%	296,161
Less Net Assets	615,536
	—319,375-

Since the total disbursements from the Fund (\$169,235) multiplied by 175% amounts to less than the Net Assets remaining in the Fund, the application of the assessment formula results in a minus figure (—\$319,375). Therefore, no assessments were made at the conclusion of fiscal year 1974-1975.

CLAIMS ACTIVITY AGAINST FUND

Claims carried from 1973-74	35
Claims against Fund	100
Claims closed	43
Claims open at end of fiscal year 1974-75	92
Estimated liabilities against Fund as of June 30, 1975	\$794,183
Increase in claims against Fund 1974-75 as compared to 1973-74	204%
Increase in claims open at end of year compared to 1973-74	262%
Total claims paid	17
Average disbursement per case	\$ 6,024

LAPSED DEATH BENEFITS PAID INTO FUND

Fatal Cases Reviewed	164
1. Above cases fully investigated or litigated	21
2. Recovery	\$96,329

HEARINGS AND OTHER LEGAL PROCEEDINGS..... 77

EDUCATIONAL ACTIVITIES

Seminars or Meetings with Insurance Carriers or Employers	21
8 mm Sound Film prepared explaining changes in Act	
New Brochure reflecting changes in Act	
Two television and two radio public service commercials	

DISBURSEMENTS TO CARRIERS OR SELF-INSURERS

Aetna Casualty and Surety Company	\$ 8,066
American Mutual Liability Insurance Company	4,948
Liberty Mutual Insurance Company	42,684
Maryland Casualty Company	11,000
Northwestern National Insurance Group	5,630
The Randolph W. Hope Company, Inc.	8,942
Standard Fire Insurance Company	1,534
State Workmen's Compensation Fund	13,948
Duke Power Company	5,354
Miscellaneous expense related to indemnity claims	298

TOTAL **\$102,404**

DISBURSEMENTS TO EMPLOYER

	Location	Amount
Alice Manufacturing Company	Easley, S.C.	\$ 4,948
Bigelow-Sanford, Inc.	Greenville, S.C.	1,056
Burlington Industries	Greenville, S.C.	2,421
Clemson University	Clemson, S.C.	13,948
Colite Industries	Columbia, S.C.	3,894
Duke Power Company	Seneca, S.C.	5,354
Fairway Ford	Greenville, S.C.	8,942
Owens Corning Fiberglass Corp.	Anderson, S.C.	4,172
Pacific Columbia Mills	Columbia, S.C.	4,750
*Spring Mills	Fort Mill, S.C.	34,457
Suburban Gas Company	Summerville, S.C....	5,630
Talon Div. of Textron	Loris, S. C.	1,534
U.S. Cocoa Mat Corporation	St. George, S.C.....	11,000
		<hr/>
		\$102,106
Miscellaneous claims handling expense		298
		<hr/>
		\$102,404

* The reimbursement of \$34,457 to Springs Mills represents 12 percent of approximately \$300,000 paid out in actual benefits by that company during the calendar year 1974. Most of these cases were governed by the law as passed in 1972 which required the employer to pay the first 104 weeks of disability and medical benefits. Overall, the Fund reimbursed \$102,404 to industry, and this amounts to .34% of the \$29,893,986 paid by employers and carriers during the calendar year 1974.

The cases reported by Springs Mills were not significantly different in severity of nature when compared to other cases reported to the Second Injury Fund. In fact, of the Springs cases paid, the average payment was \$6,891 as compared to the overall average reimbursement of \$6,024.

Springs Mills is undoubtedly better equipped than most employers in meeting the prerequisites for reimbursement; however, using this factor to discount the 12 percent reim-

bursement by 75 percent, Springs would probably have received 3 percent reimbursement. This is still far greater than .34 of a percent reimbursed to industry on an overall bases.

In conclusion, it is safe to say that the concept of the Second Injury Fund does work and has worked in the case of Springs Mills. In addition, Second Injury Fund successes are seen in other states and are starting to appear in South Carolina, especially when disbursements during 1974-75 amounted to \$102,404 as compared to \$11,063 for 1973-74. Case reporting against the Fund has increased; however; considerable future work needs to be done by the Fund in educating industry as well as industry itself recognizing those cases that would possibly qualify for reimbursement. Achievements are being made as reflected by the increasing activity against the Fund, and as more achievements are made in the above areas, barriers confronting the employment of the handicapped should be reduced. The Second Injury Fund approach can go a long way toward helping solve the employment of the handicapped or disabled segment of this State's population. Any improvement in this area undoubtedly will be beneficial to the State as a whole.